

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)	Docket No. 01-EP-6
)	
Application for Certification of CALPINE KING)	
CITY LM 6000 PROJECT BY CALPINE)	
CORPORATION)	

**RESPONSE OF CALPINE CORPORATION TO THE
NOTICE OF COMMISSION CONSIDERATION OF A REQUEST BY
CALPINE TO EXTEND THE ONLINE DATE BEYOND THE
SEPTEMBER 30, 2001, DEADLINE**

August 16, 2001

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INTRODUCTION

Calpine Corporation ("Calpine") hereby files this Response to the Committee's August 9, 2001 "Notice Of Commission Consideration Of A Request By Calpine To Extend The Online Date Beyond The September 30, 2001, Deadline." This Response is intended to fulfill the Committee's order directing Calpine to file and serve legal argument and supporting documentation in support of its request, including responses to Staff's inquiries on this matter, which were provided to Calpine on July 24, 2001.

SUPPORTING DOCUMENTATION

On May 5, 2001 the California Energy Commission approved for certification the King City Energy Center located on a parcel adjacent to the existing Calpine co-generation Plant. On June 7, 2000 Calpine submitted an application to relocate the King City Energy Center to an adjacent 8.04-acre parcel. On June 25, 2001, the Commission approved the amendment to relocate the project to the adjacent parcel.

The Committee Order directed Applicant to include in this Response answers to Staff's inquiries on this matter, which were provided to Calpine on July 24, 2001. The e-mail message to Applicant from the Commission's Compliance Project Manager also requested that responses be filed in accordance with the informational requirements of Section 1769 of the Commission's Regulations.

Applicant does not believe that a formal amendment should be required for this proceeding. The Committee Order and the filings in response thereto are directed toward the issue of the on-line date for the project. All other aspects of the project remain unchanged. Specifically, the project description, the impacts identified by Staff and the proposed measures that mitigate those impacts to a level of less than significant are all unchanged. Only the date for the project to come on-line is at issue here. Accordingly, a formal amendment is not required.

Nevertheless, in the interest of meeting the Staff's informational requirements, Applicant has complied with the requested information and formatted it pursuant to the informational requirements of Section 1769. This information is attached hereto and is designated as "Attachment A."

LEGAL ARGUMENTS

The Application for Certification for the Calpine King City LM 6000 Project was processed pursuant to Public Resources Code Section 25705, related to the Commission's emergency power, and Executive Orders D-26-01 and D-28-01, related to the current state of emergency declared by the Governor.

The Commission's legal authority to conduct the hearing scheduled for August 22, 2001, is set forth in the Commission's Decision on the King City project. Specifically, the Commission Decision certifying the King City project provides as follows:

Start of Operations: The Calpine King City LM 6000 Project shall be online by no later than September 30, 2001. If the Calpine King City LM 6000 Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the project owner failed to proceed with due diligence to have the Calpine King City LM 6000 Project in operation by September 30, 2001, the Applicant shall forfeit its certification. (Final Decision, pp. 11-12.)

As set forth herein, the record supports the conclusion that the Applicant has proceeded with due diligence to have the King City Energy Center in operation at the earliest possible date. In proceeding with the development of the King City Energy Center, Applicant reasonably relied on the Commission's Decision in this matter. Applicant agreed to this condition and reasonably relied on the representations that failure to meet the September 30, 2001 deadline would be subject to hearing by the full Commission and a determination as to whether the Applicant has proceeded with all due diligence.

Public Resources Code Section 25705, cited in the Commission's Decision, provides another important authority for the Commission's consideration of Applicant's request. Specifically, Section 25705 provides as follows:

§ 25705. Construction and use of emergency generating facilities; report

If the commission determines that all reasonable conservation, allocation, and service restriction measures may not alleviate an energy supply emergency, and upon a declaration by the Governor or by an act of the Legislature that a threat to public health, safety, and welfare exists and requires immediate action, the commission shall authorize the construction and use of generating facilities under such terms and conditions as specified by the commission to protect the public interest.

It is important to note that all of the Governor's executive orders issued to date continue on their own terms until December 31, 2001. Thus, the State of Emergency

remains in effect. Further, the Commission's Decision provides the specific terms and conditions to protect the public interest in allowing the King City project to proceed.

Thank you for your time and consideration.

Respectfully submitted,

Dated: August 16, 2001

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____
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